IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8233 of 1999

For Approval and Signature:
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH KALKAPRASAD KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:
MR SATISH R PATEL for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Baroda City, Baroda passed an order on September 10, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The detaining authority considered two prohibition cases registered against the detenue. The authority also considered statements of three anonymous witnesses and came to conclusion that the detenue is a "bootlegger" as defined under the PASA Act. The detaining authority

recorded satisfaction for the need for exercise of power under section 9(2) of the PASA Act of claiming privilege of not disclosing the identity of the witnesses. After considering the less drastic remedies, the authority decided to exercise the powers under the provisions of the PASA Act in order to immediately preventing the petitioner form pursuing his bootlegging activities which are detrimental to public order.

#. The petitioner has challenged the order of detention on various grounds. However, learned advocate Mr. Patel, has restricted his arguments on the ground of delay in considering the representation made on behalf of the detenue. He submitted that the brother of the detenue made a representation to the Home Minister on September 30, 1999, demanding report of the Chemical Analyzer of Forensic Science Laboratory and statements of certain witnesses. The said representation was personally handed over on that very day. Despite this, Mr. Patel submitted that no heed was paid to the representation till the petition came to be filed on October 15, 1999. In fact, the documents have been supplied by a communication dated December 8, 1999 and therefore, there is delay of abut two and a half months in considering the representation. Mr. Patel, therefore, urged that the petition may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition. He however, after consulting the file, stated to the effect that the representation was received on September 30, 1999 and the documents were supplied by communication dated December 8, 1999 to the detenue.

#. Considering the rival side contentions, it appears that the documents demanded were initially not supplied. They have been supplied upon a representation made on behalf of the detenue, but supply is after almost two and a half months. It appears that the statements demanded and the report of the Chemical Analyzer were ready and available when the representation was made and therefore, the delay of about two and a half months in supplying the documents is unreasonable and inordinate. No attempt is made on the part of any of the respondents to explain this delay by filing an affidavit. This unexplained delay can be said to have affected the right of the detenue of making an effective representation. This would vitiate the continued detention of the petitioner-detenue and is sufficient to quash the detention order.

#. This petition is allowed. The impugned order of detention dated September 10, 1999 is hereby quashed and set aside. The detenue - Suresh Kalkaprasad Kahar is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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